

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7050 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

A R BHATT

Versus

COLLECTOR

Appearance:

Shri B.P.Tanna, Advocate, for the Petitioner.

Kum. P.S.Parmar, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 28/11/96

ORAL JUDGEMENT

The judgment and order passed by the Gujarat Civil Services Tribunal at Gandhinagar (the Tribunal for

convenience) on 10th October 1985 in Appeal No.656 of 1982 is under challenge in this petition under Article 227 of the Constitution of India. By its impugned judgment and order, the Tribunal dismissed the petitioner's appeal against his claim for the deemed date of promotion to the post of Deputy Mamlatdar.

2. The facts giving rise to this petition move in a narrow compass. The petitioner entered the services of the erstwhile State of Junagadh as a clerk from 16th March 1949. He was a non-matric. It appears that he could not get promotion to the post of Deputy Mamlatdar because he had not passed his matriculation examination. It appears that one Vaghani was promoted as Deputy Mamlatdar in 1959 though he was also non-matric. Later on, the petitioner came to be temporarily promoted to the post of Deputy Mamlatdar for a short span in 1964 and for a period of three years between 1965 and 1968 though he continued to remain non-matric. He was regularly promoted to the post of Deputy Mamlatdar from 1976 till he attained the age of superannuation and got superannuated in October 1982. It appears that the State Government in its Revenue Department issued one Resolution on 7th August 1978. Thereby it was decided that non-matric candidates should also be given promotion to the post of Deputy Mamlatdar if they were not given promotion. Such promotion should be from the date a person junior to him was given promotion. It has however been made clear in the aforesaid Government Resolution that no difference of salary should be paid by giving the deemed date of promotion till the actual date of promotion. Its copy is at Annexure-B to this petition. Thereupon, the petitioner appears to have made a representation on 10th November 1978 to the Collector of Rajkot (the respondent herein) some time in 1978 for getting benefit of the deemed date of promotion. By his order passed on 19th May 1979, the respondent rejected the petitioner's representation. It appears that the petitioner's earlier representation did not contain certain relevant details. He thereupon made another detailed representation to the respondent on 10th June 1979 for claiming the deemed date of promotion to the post of Deputy Mamlatdar. By his order passed on 22nd February 1981, the respondent again rejected the petitioner's representation. Thereupon, the petitioner moved the Tribunal by means of an appeal against the aforesaid order passed by the Collector on 22nd February 1981. It came to be registered as Appeal No.656 of 1982. By the judgment and order passed on 10th October 1985 in the aforesaid appeal, the Tribunal dismissed it. Its copy is at Annexure-A to this petition. The aggrieved

petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the judgment and order of the Tribunal at Annexure-A to this petition.

3. The Tribunal did not find any merit in the petitioner's case mainly on the ground that the petitioner's confidential record for the years 1954 to 1958 was not satisfactory.

4. It may be mentioned at this stage that the petitioner's case before the Tribunal was that adverse entries in his confidential record were not communicated to him and that the remark "Fair" made in his confidential record during the relevant years could not be said to be adverse in any manner. The Tribunal did not agree with the first ground mainly for the reason that it was not the practice of the Government to communicate adverse entries in the confidential record at the relevant time. So far as the second ground was concerned, the Tribunal undertook the exercise of examining the confidential record itself and came to the conclusion that it was not satisfactory though the remark "Fair" was mentioned during the relevant years.

5. Uncommunicated remarks in the confidential record cannot be the basis for non-consideration of an employee for the promotional post. I am fully supported, rather fortified, in my view by the ruling of this court in the case of DR.B.R.KULKARNI v. GOVERNMENT OF GUJARAT reported in (1978) 19 Gujarat Law Reporter at page 1021. It is clearly held therein: "It is well-settled that adverse remarks, which are not communicated within a reasonable time to the affected Government servant and against which no opportunity of representation has been afforded, could not validly enter into consideration for the purposes of considering the claim for promotion".

6. Sitting as a single Judge, the aforesaid ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It will be a trite statement of law to say that judgments are retrospective in operation unless operation thereof is specifically made prospective. In that view of the matter, whether or not there was any practice of communication of adverse remarks to the affected employee, the aforesaid principle of law would operate in the field. It is not in dispute that adverse remarks in his confidential record were never communicated to the petitioner at the relevant time. Such adverse remarks could not have been taken into consideration for denial to the petitioner his right

of promotion. The contrary conclusion reached by the Tribunal cannot therefore be sustained in law in view of the aforesaid binding ruling of this court.

7. It appears not to be in dispute that the person junior to the petitioner was one Shri Kazi. He was admittedly a matriculate. He was promoted in 1957. In view of the Government Resolution at Annexure-B to this petition, the petitioner ought to have been given the deemed date of promotion from the date on which said Shri Kazi was promoted. It is obvious that the petitioner would not be entitled to claim any difference of salary between the deemed date of promotion and the date of his actual promotion. It is an admitted position on record that the petitioner was regularly promoted to the post of Deputy Mamlatdar from 1978. The deemed date of promotion has however to be considered for fixation of his notional salary in the scale for the post of Deputy Mamlatdar for the purpose of terminal benefits to which the petitioner would become entitled to.

8. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of the Tribunal at Annexure-A to this petition cannot be sustained in law. It deserves to be quashed and set aside. The petitioner deserves to be given the deemed date of promotion from the date on which his junior, named, Shri Kazi, was promoted in 1957. His salary on the basis of the deemed date deserves to be notionally fixed for the purpose of his terminal benefits as he has already reitred in October 1982 on reaching the age of superannuation.

9. In the result, this petition is accepted. The judgment and order passed by the Gujarat Civil Services Tribunal at Gandhinagar on 10th October 1985 in Appeal No.656 of 1982 at Annexure-A to this petition is quashed and set aside. The petitioner's claim for the deemed date of promotion to the post of Deputy Mamlatdar from the date such promotion was given to his immediate junior, named, Shri Kazi, is accepted. The respondent is directed to fix the petitioner's notional salary accordingly and to work out the difference of terminal benefits to which the petitioner would be entitled to on that account. The respondent is directed to work out such difference with interest to be paid thereon, if such interest is payable according to Government policy, and to make payment thereof on or before 31st March 1997. Rule is accordingly made absolute with no order as to costs.

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